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TRA DOCKET

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June 28, 2005

**VIA HAND DELIVERY**

Honorable Pat Miller, Chairman  
c/o Sharla Dillon, Docket & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

RE: Petition of Cellco Partnership d/b/a/ Verizon Wireless for Arbitration Under the  
Telecommunications Act of 1996, TRA Consolidated Docket No. 03-00585

Dear Chairman Miller.

Pursuant to your request at the status conference conducted on June 14, 2005, attached hereto please find an original and thirteen (13) copies of *CMRS Providers' Joint Brief Regarding Statutory Requirements for Symmetrical Rates Based on Each ICO's Forward-Looking Costs* for filing in the above-referenced matter

The enclosed documents have been served on counsel for the Rural Independent Coalition and other parties of record. If you have any questions about this filing or need any additional information, please do not hesitate to give me a call at (615) 744-8446.

Sincerely,



J. Barclay Phillips  
Melvin J. Malone

Enclosures

cc: William T. Ramsey, Esq.  
Stephen G. Kraskin, Esq.  
Paul Walters, Jr., Esq.  
Mark J. Ashby, Esq.  
Edward Phillips  
Charles W. McKee  
Elaine Critides  
Dan Menser  
Marin Fettman  
Leon M. Bloomfield

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**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

Petition of:	)	
	)	
Cellco Partnership d/b/a Verizon Wireless	)	Consolidated Docket
For Arbitration Under the	)	No. 03-00585
Telecommunications Act of 1996	)	

**CMRS PROVIDERS' JOINT BRIEF  
REGARDING STATUTORY REQUIREMENTS FOR SYMMETRICAL RATES  
BASED ON EACH ICO'S FORWARD-LOOKING COSTS**

Petitioners Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), New  
Cingular Wireless PCS, LLC ("Cingular Wireless"), Sprint Spectrum L.P. d/b/a Sprint PCS  
("Sprint PCS"), and T-Mobile USA, Inc. ("T-Mobile"), collectively referred to herein as the  
CMRS Providers, hereby submit this Joint Brief in the captioned Docket.

**Introduction**

At the status conference on June 14, 2005, Chairman Miller requested that all parties  
"brief the application of CFR 47 Section 51.711" for setting reciprocal compensation rates <sup>1</sup>  
More specifically, Chairman Miller asked the parties to brief (1) whether rates for reciprocal  
compensation must be symmetrical (as opposed to an ICO charging a CMRS Provider a different  
rate than the CMRS Provider charges the ICO), and (2) whether the rate for each ICO must be  
based on the ICO's specific forward-looking costs (as opposed to one rate for all ICOs).<sup>2</sup>

**A. The Act and FCC Rules Impart Unique Obligations on Incumbent Local  
Exchange Carriers.**

Section 252(d)(2)(A) of the Telecommunications Act of 1996 ("Act") applies cost-based  
pricing requirements *only* on "incumbent local exchange carrier[s]". The FCC's cost study  
requirements follow suit. For example, 47 CFR § 51.503 requires that an "*incumbent LEC's*"

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<sup>1</sup> Transcript (Chairman Miller) at p 24 ll 21-24

<sup>2</sup> *Id* at 19 ll 13-21

rates be based on the FCC's "forward-looking economic cost-based pricing methodology."

[Emphasis added.] Similarly, the cost-based, forward-looking rate requirements of 47 CFR § 51.705 apply only to "incumbent LECs." Applicable federal law thus clearly establishes that the ICOs (as incumbent LECs) are required to demonstrate cost-based, forward-looking rates.

The Act and FCC regulations do *not* impose that same requirement upon the CMRS Providers. Only incumbent local exchange carriers are required to establish inter-carrier compensation rates based upon TELRIC principles.

**B. Federal Law Requires the TRA to Establish Symmetrical Reciprocal Compensation Rates Based on Each ICO's Forward Looking Costs.**

Section 252(d)(2)(A) of the Act provides:

For the purposes of compliance by an *incumbent local exchange carrier* with section 251(b)(5), a State commission shall not consider the terms and conditions to be just and reasonable unless—

- (i) such terms and conditions provide for the *mutual and reciprocal* recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier and;
- (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional *costs* of terminating such calls. [Emphasis added].

Section 252(d)(2)(A) requires inter-carrier compensation to be "mutual and reciprocal," based on the cost of the facilities used to transport and terminate telecommunications traffic. 47 C.F.R. § 51.711 implements those requirements. Subsection (a) states that "rates ... *shall* be symmetrical, *except* as provided in paragraphs (b) and (c) of this section." Subsection (b) grants the TRA the power to establish asymmetrical rates, if the "carrier other than the incumbent," or the smaller of two ILECs, shows that its forward-looking costs are *higher* than the incumbent's. (Subsection (c) is inapplicable in this case, applying only to paging carriers.) In the order

adopting rule 51.711, the FCC explained that “state commissions, during arbitrations, should set symmetrical prices based on the *local telephone company's* forward-looking economic costs.”<sup>3</sup>

[Emphasis added.]

No CMRS provider is seeking asymmetrical inter-carrier compensation. Thus, 47 C.F.R. § 51.711 requires that symmetrical rates be established, based on the forward-looking costs of the incumbent carrier.

**C. FCC Regulations Require Each ICO to File a Separate Forward-Looking Cost Study.**

Not only must rates be symmetrical between ICOs and CMRS Providers, but each ICO must establish a separate rate (to be symmetrical with all the CMRS Providers) based on that ICO’s specific costs. 47 C.F.R. § 51.505(e) states:

An incumbent LEC must prove to the state commission that the rates for each element *it offers* [not an element offered by another carrier] do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511. [Emphasis added.]

If the rule were otherwise, LECs would have the ability to arbitrage their rates based on the potentially higher costs of other carriers. In fact, although the ICOs failed to offer appropriate cost studies during the arbitration, the rates they did propose indicate that their respective costs are quite varied.<sup>4</sup>

The Act and FCC regulations thus require an incumbent LEC to prove its costs by using a cost study that complies with the FCC’s TELRIC methodology found in 47 CFR §§ 51.505 and 51.511. The Act and FCC regulations do not allow multiple companies to establish a single,

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<sup>3</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, ¶ 35 (rel. Aug. 8, 1996)

<sup>4</sup> See Proprietary Attachment E to the Testimony of Steven E. Watkins, which proposes 18 different rates for 18 ICOs. The difference from the lowest to the highest proposed rate is \$0.027661 per minute of use.

joint rate through the use of an “averaged” cost study. Instead, each incumbent LEC must produce its own study.

Moreover, the cost study relied upon by each incumbent LEC must be made a part of the record. Subsection (2) of § 51.505(e) mandates:

Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section *shall include any such cost study*. [Emphasis added.]

Similarly, the *First Report and Order* makes clear that the cost study produced by each incumbent LEC must be made a part of the record:

“In setting a rate pursuant to the cost-based pricing methodology . . . the state must give full and fair effect to the economic costing methodology we set forth in this Order and must create a factual record, including the cost study, sufficient for purposes of review after notice and opportunity for the affected parties to participate.”<sup>5</sup>

Thus, in the present case, each ICO must file its own cost study in the record, and the TRA must set a separate reciprocal compensation rate for each independent company based upon that company’s individual study. Neither the Act nor FCC regulations provide otherwise.

### **Conclusion**

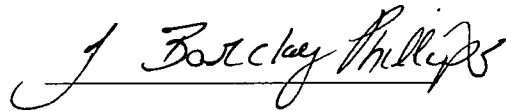
At the status conference, counsel for the ICOs stated that a single averaged rate for all the ICOs could not be established outside an agreement between the Parties.<sup>6</sup> The CMRS providers agree. There being no agreement between the parties, nor request by the CMRS providers to

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<sup>5</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, ¶ 619 (rel. Aug. 8, 1996)

<sup>6</sup> Transcript (Mr. Ramsey) at p. 18 ll. 16-25. “Obviously it would be better for everybody if there were—was one rate because it would be easier to administer. Having said that, I’m not sure that this commission could do that absent an agreement from the parties because at least to my understanding what would have to happen if we actually go to a full-blown adversarial proceeding is there would have to be—there would probably have to be individualized determinations based on each particular coalition member’s costs.”

establish asymmetrical rates, the TRA is required by the Act and FCC rules to establish separate and symmetrical reciprocal compensation rates based on each ICO's individual forward-looking costs.

A handwritten signature in cursive script, reading "J. Barclay Phillips". The signature is written in dark ink and is positioned above a horizontal line.

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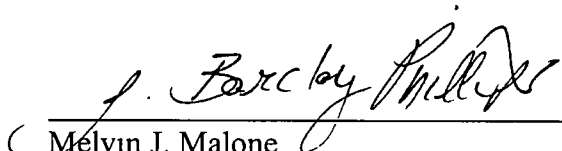
## CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2005, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

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